



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**JUL 16 2014**

James Miller

Sarasota, FL 34231

RE: MUR 6601  
Steve Oelrich  
Steve Oelrich for Congress and  
Jacqueline Schall in her official  
capacity as treasurer  
Steve Oelrich Campaign and  
Jacqueline Schall in her official  
capacity as treasurer

Dear Mr. Miller:

This is in reference to the complaint you filed with the Federal Election Commission on July 3, 2012, concerning alleged violations of the Federal Election Campaign Act of 1971, as amended, by the above-named respondents. After considering the circumstances of this matter, the Commission determined to dismiss this matter and closed the file on July 10, 2014. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

**Daniel A. Petalas**  
Associate General Counsel for Enforcement

Pt 102

BY: Peter G. Blumberg  
Assistant General Counsel

**Enclosure**  
**Factual and Legal Analysis**

**TESTIMONY**

**FEDERAL ELECTION COMMISSION**

**RESPONDENTS:** Steve Oelrich  
Steve Oelrich Campaign and Jacqueline Schall  
in her official capacity as treasurer  
Steve Oelrich for Congress and Jacqueline Schall  
in her official capacity as treasurer

MUR 6601

**FACTUAL AND LEGAL ANALYSIS**

**I. INTRODUCTION**

This matter was generated by a Complaint filed with the Federal Election Commission alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Respondents.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

Steve Oelrich was a Florida State Senator and a Congressional candidate in the 2012 election cycle. The Complaint in this matter alleges that Oelrich, his federal authorized committee, Steve Oelrich for Congress (the "Federal Committee"), and his state committee, the Steve Oelrich Campaign (the "State Committee"), violated the Act in connection with a radio advertisement paid for and disseminated by the State Committee. In the advertisement, Oelrich thanked his constituents that he served as Sheriff and then as State Senator and addressed his state legislative accomplishments. The Complaint alleges that the advertisement violates the Act because it lacked any disclaimer. The Complaint also alleges that because the ad was paid for by the State Committee, which accepted corporate contributions, Respondents violated the Act's ban on corporate contributions.

Oelrich and the Federal Committee responded that the radio advertisement in question only referenced state-level matters that Oelrich had been involved with and was directed only to

1 persons in his State Senate geographical area.<sup>1</sup> Resp. at 1 (Aug. 28, 2012). Oelrich and the  
2 Federal Committee also state that there were no references to a federal candidacy or election and  
3 assert that the radio ad should not be deemed an activity that triggers any federal election  
4 requirements. *Id.*

5 As discussed below, in view of the unique circumstances of this matter, the Commission  
6 exercises its prosecutorial discretion to dismiss the allegations in the Complaint and closes the  
7 file.

8 **B. Facts**

9 Oelrich filed a Statement of Candidacy on February 3, 2012, for the U.S. House of  
10 Representatives election in the newly drawn Third Congressional District of Florida, and was a  
11 candidate in the Republican primary election on August 14, 2012.<sup>2</sup> At that time, Oelrich was a  
12 sitting Florida State Senator, but did not file for reelection as State Senator by the June 8, 2012,  
13 deadline. *See* Resp. at 2-4. Oelrich's State Senate term ended on November 16, 2012.

14 On June 25, 2012, according to Respondents, Oelrich's State Committee began airing a  
15 radio advertisement. Resp. at 3. The Complaint did not include the radio advertisement script.  
16 The Federal Committee's Response asserts that the advertisement stated:

17 This is Steve Oelrich. I want to thank the citizens of North Central  
18 Florida for allowing me to serve and represent you – first as Sheriff and  
19 then as your State Senator.

20  
21 **Thank you** for those who supported us in our challenge to successfully  
22 balance the state budget every year.

<sup>1</sup> The Federal Committee filed the Response containing a "Declaration and Verification" by Oelrich. *See* Resp. at 7. Oelrich later adopted the Response on his own behalf. *See* Oelrich Resp. (June 21, 2013). The State Committee was notified of the Complaint but did not submit a response.

<sup>2</sup> Oelrich originally filed a Statement of Candidacy on January 19, 2012, for the Sixth Congressional District of Florida. He filed an amended statement on February 3, 2012, designating the election in the Third Congressional District. Oelrich lost the primary election, coming in third with 19% of the vote.

Our state's education system, including the University of Florida, should not have to suffer financially in order to pay for earmarks or un-necessary pet projects.

**Thanks** for offering your prayers as we fought to curb late term abortions and prevent the state from spending tax dollars to fund abortions.

We passed a new law mandating drug testing for welfare recipients. And we moved legislation protecting your right to bear arms in the State of Florida against intrusive federal gun regulations.

We also passed legislation helping organ donors and those who receive the gift of life.

I'm State Senator Steve Oelrich. My family and I **thank you** for placing your trust in me. God Bless you, your family, the great state of Florida and the United States of America.

Resp. at 3 n.4 [emphasis in original].

The Federal Committee asserts that the advertisement ran only on stations geographically focused on Oelrich's State Senate district, and not on the entire Third Congressional District.<sup>3</sup>

*Id.* at 4. The available information does not indicate how long the advertisement aired, although the Response states that under Florida law, Oelrich was permitted to use state campaign funds to air "thank you" advertising until August 22, 2012, 75 days after withdrawing as a state candidate on June 8, 2012.<sup>4</sup> *Id.* at 3.

<sup>3</sup> Oelrich stated in a press release that his State Senate district made up "over 63%" of the Congressional District. *See* Resp. Att. 2; *see also Steve Oelrich Running for Congress, 3rd District*, CHIEFLAND CITIZEN, June 21, 2012, <http://www.chieflandcitizen.com/content/steve-oelrich-running-congress-3rd-district>.

<sup>4</sup> The Response cites a Florida statute specifically authorizing a candidate who withdraws his or her candidacy or is eliminated as a candidate to expend funds remaining in his or her state campaign account to "[p]urchase 'thank you' advertising for up to 75 days after he or she withdraws, becomes unopposed, or is eliminated or elected." Fla. Stat. Title IX, § 106.11(5)(a). The Response states that Oelrich withdrew as a candidate for reelection to state office on June 8, 2012, by virtue of not filing "qualification papers" with the state. Resp. at 2-3.

As detailed in the chart below, the State Committee's disclosure reports indicate that it spent \$37,350 on the radio advertisement:<sup>5</sup>

<u>Payment</u>	<u>Date</u>	<u>Purpose</u>	<u>Payee</u>
\$27,000.00	6/22/2012	Thank You Advertising	Let's Get to Work Productions
\$ 6,300.00	6/25/2012	Thank You Advertising	Let's Get to Work Productions
\$ 1,800.00	7/20/2012	Thank You Advertising	Let's Get to Work Productions
\$ 2,250.00	8/10/2012	Thank You Advertising	Let's Get to Work Productions

Between 2011 and 2012, the State Committee accepted 45 contributions totaling \$20,500 from entities explicitly identified as corporations, and over 100 contributions from other entities totaling over \$47,000, some of which may constitute corporate funds, out of a total of 380 contributions received totaling \$149,707.<sup>6</sup> According to the Response, the State Committee had \$43,000 cash-on-hand as of June 8, when Oelrich ceased to be a state candidate. Resp. at 2.

The Complaint alleges that Oelrich's advertisement lacked a required disclaimer in violation of the Act. Compl. at 2. Respondents assert that no federal disclaimer was required because the advertisement was not paid for by a federal political committee, did not contain express advocacy, and was exempt from the definition of "electioneering communication." Resp. at 6. Respondents also assert that the State Committee contacted the Florida Division of Elections prior to running the advertisement and was advised that no disclaimer was required. Resp. at 4 n.4. According to the Response, after the Complaint noted the lack of a disclaimer "and similar questions arose from the radio station perspective," the State Committee added the

<sup>5</sup> See Resp. Attach. 6 (State Committee disclosure report covering April 1 through August 9, 2012) and a later version of the disclosure report covering through August 16, 2012, available on the Florida Secretary of State website.

The State Committee disclosed additional disbursements totaling \$910.47 that were made between July 2 and August 11 for costs relating to written "thank you advertising" (e.g., envelopes, labels, and postage). The Commission does not have a copy of the written communication or any description of it. Consequently, the Commission does not know whether the text of the written communication is similar to Oelrich's radio advertisement.

<sup>6</sup> Florida permits corporate contributions to state candidates. See generally FLA. STAT. Ch. 106 (2012); see <http://election.dos.state.fl.us/campaign-finance/cam-finance-reporting.shtml>.

1 following disclaimer to the advertisement: "Political advertisement paid for and approved by  
2 Steve Oelrich, Republican, State Senate, District 7." *Id.*

3 The Complaint also alleges that the payment for the advertisement resulted in a  
4 prohibited corporate contribution to the Federal Committee because it was paid for by the State  
5 Committee, which accepted corporate funds. Compl. at 3. Respondents assert that the radio  
6 advertisement does not implicate the Act's corporate contribution prohibitions at 2 U.S.C.  
7 §§ 441b, 441i(e), and 441i(f) because it (1) only referenced state matters; (2) was broadcast only  
8 to individuals in Oelrich's State Senate geographical area; (3) did not contain any references to  
9 his federal candidacy or election; and (4) was specifically authorized by the Florida election  
10 statutes. As such, the Committee argues that Oelrich's radio advertisement did not have a  
11 connection with a federal election. Resp. at 4-6.

### 12 C. Analysis

#### 13 1. Disclaimer and Electioneering Communication Disclosure

14 The Act and Commission regulations require a disclaimer on the following  
15 communications: (1) all public communications by electronic mail of more than 500  
16 substantially similar communications by and internet websites of a political committee; (2) all  
17 public communications, by any person, expressly advocating the election or defeat of a clearly  
18 identified candidate; (3) all public communications, by any person, that solicit any contribution;  
19 and (4) all electioneering communications, by any person. 2 U.S.C. § 441d(a); 11 C.F.R.  
20 § 110.11(a); *see also* 11 C.F.R. § 100.22 (defining "expressly advocating"); *id.* § 100.26  
21 (defining "public communication"). The Act and the Commission's regulations exempt from the  
22 definition of "electioneering communication" any communication that is paid for by a candidate  
23 for state or local office in connection with an election to state or local office, provided that the

1 communication does not promote, support, attack or oppose any federal candidate. 11 C.F.R.  
2 § 100.29(c)(5); *see also* 2 U.S.C. § 434(f)(3)(B)(iv).

3 The Act and Commission regulations further require that every person who makes  
4 aggregate disbursements exceeding \$10,000 for the cost of producing and airing electioneering  
5 communications during any calendar year must, within 24 hours of each disclosure date, disclose  
6 information regarding the communication. 2 U.S.C. § 434(f)(1); 11 C.F.R. § 104.20(b).

7 "Disclosure date" is defined as the first date on which an electioneering communication is  
8 publicly distributed, provided that the person making the electioneering communication has  
9 made one or more disbursements, or has executed contracts to make one or more disbursements,  
10 for the costs of the communication aggregating in excess of \$10,000. 11 C.F.R. § 104.20(a)(1).

11 Oelrich's radio advertisement was not paid for by a federal political committee, did not  
12 contain express advocacy, and did not solicit any contributions. Thus, the communication is  
13 within the scope of the disclaimer requirements only if it was an "electioneering  
14 communication." *See* 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). An "electioneering  
15 communication" is any broadcast, cable, or satellite communication that refers to a clearly  
16 identified candidate for federal office, is publicly distributed within 60 days of the general  
17 election or within 30 days of the primary election, and, for House and Senate candidates, is  
18 targeted to the relevant electorate. 2 U.S.C. § 434(f)(3)(A); 11 C.F.R. § 100.29(a).

19 The advertisement was a broadcast communication that refers to Oelrich, a clearly  
20 identified federal candidate. *See* 2 U.S.C. § 431(18); 11 C.F.R. § 100.17. The ad aired  
21 beginning on June 25, 2012, *see* Resp. at 3. The relevant 30-day electioneering communication  
22 window began on July 14, 2012, before the August 14, 2012, primary election. *See* 2 U.S.C.  
23 § 434(f)(3). The available information does not indicate an end date for the ad. The



1 advertisement appears to have been targeted to the relevant electorate, as all five stations on  
2 which the ad was aired broadcast into the Third Congressional District. *See Resp.* at 4 n.5  
3 (listing five radio stations on which the advertisement aired). Further, Oelrich was not a  
4 candidate for state or local office when the advertisement aired.<sup>7</sup> *See Resp.* at 2-3 (Oelrich  
5 withdrew as a candidate for reelection to state office on June 8, 2012, by virtue of not filing  
6 “qualification papers” with the State of Florida). Thus, the exemption for state or local  
7 candidates does not apply to Oelrich’s radio advertisement.

8 The State Committee spent \$37,350 on the Oelrich advertisement that began to air on  
9 June 25, 2012, according to Respondents. If the State Committee spent more than \$10,000 on  
10 the ad during the electioneering communications window — the 30-day period before the  
11 August 14, 2012, primary election — the State Committee was required to file 24-hour  
12 electioneering communication reports. *See* 2 U.S.C. § 434(f). The State Committee did not file  
13 any such reports.

14 Though Oelrich’s radio advertisement may have been subject to the disclosure and  
15 disclaimer provisions applicable to electioneering communications, the Commission dismisses  
16 the allegations that Steve Oelrich Campaign and Jacqueline Schall in her official capacity as  
17 treasurer violated 2 U.S.C. §§ 434(f) and 441d in connection with the advertisement. First,  
18 because the advertisement reportedly began to air on June 25, 2012, prior to the start of the  
19 electioneering communication period on July 14, 2012, any portion of the cost of the ad

<sup>7</sup> Oelrich was a state officeholder at the time of the radio advertisements, but the Act and Commission regulations distinguish between applicability to state or local candidates and state or local officeholders. *See, e.g.,* 2 U.S.C. § 441i(f); 11 C.F.R. § 300.70 (applies to a candidate for state or local office and an individual holding state or local office). As to the section 100.29(c)(5) exemption, the Commission proposed an exemption that would cover communications by state and local candidates and officeholders, but the final rule was limited to state and local candidates. *See* Final Rules and Explanation and Justification for Electioneering Communications, 67 Fed. Reg. 65,190, 65,198-99 (Oct. 23, 2002).

1 corresponding to the period prior to July 14, 2012 does not constitute an electioneering  
2 communication. Second, to the extent that the ad did not contain a disclaimer during a portion of  
3 the electioneering communication period, the public was unlikely to have been misled as to  
4 whether Oelrich approved the message because the ad consisted of Oelrich speaking. And  
5 although a disclaimer was added that did not fully comply with FECA requirements for  
6 electioneering communications, it identified Oelrich as paying for and approving the ad. For  
7 these reasons, the Commission dismisses these allegations. *See Heckler v. Chaney*, 470 U.S. 821  
8 (1985).

9                   2.       Use of Nonfederal Funds.

10           The Complaint also alleges that the Federal Committee violated the prohibition on  
11 corporate contributions because the Oelrich advertisement was paid for by the State Committee,  
12 which was permitted to accept corporate contributions. Compl. at 3; *see* 2 U.S.C. § 441b(a);  
13 11 C.F.R. § 114.2. The Act restricts certain uses of nonfederal funds,<sup>8</sup> including corporate funds,  
14 by federal candidates. *See* 2 U.S.C. § 441i(e). Specifically, the Act prohibits federal candidates,  
15 their agents, and entities directly or indirectly established, financed, maintained, or controlled by  
16 federal candidates from soliciting, receiving, directing, transferring, or spending funds in  
17 connection with an election for federal office, including funds for any federal election activity,  
18 unless the funds are subject to the limitations, prohibitions, and reporting requirements of the  
19 Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. The Act identifies “federal election activity”  
20 (“FEA”) to include public communications that refer to a clearly identified candidate for federal  
21 office and that promote, attack, support or oppose (“PASO”) a candidate for that office,

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<sup>8</sup> Federal funds, by contrast, are defined as “funds that comply with the limitations, prohibitions, and reporting requirements of the Act.” 11 C.F.R. § 300.2(g).

1 regardless of whether the communication expressly advocates a vote for or against a candidate.  
2 2 U.S.C. § 431(20)(A)(iii); 11 C.F.R. § 100.24(b)(3). Further, Commission regulations prohibit  
3 the transfer of funds or assets from a candidate's campaign committee for a nonfederal election  
4 to his or her principal campaign committee. 11 C.F.R. § 110.3(d).

5 Oelrich was a federal candidate and his State Committee is an entity that he directly  
6 established, financed, maintained, or controlled. *See* Advisory Op. 2009-26 (Coulson) at 5;  
7 Advisory Op. 2007-01 (McCaskill) at 3. The radio advertisement is a "public communication"  
8 that clearly identifies a federal candidate because it identifies Oelrich by name. *See* 2 U.S.C.  
9 §§ 431(18), 431(22); 11 C.F.R. §§ 100.17, 100.26; AO 2009-26 (Coulson) at 7. Thus, section  
10 441i(e) would prohibit the disbursements made by the State Committee for the Oelrich radio  
11 advertisement if the ad qualifies as "federal election activity" ("FEA") by referring to a candidate  
12 for federal office and "promot[ing], attack[ing], support[ing], or oppos[ing]" ("PASOing") that  
13 federal candidate.<sup>9</sup> *See* 2 U.S.C. §§ 441i(e)(1)(A), 431(20)(A)(iii).

14 If the advertisement PASO'd Oelrich, under section 441i(e) only funds permissible under  
15 the Act may be used to pay for the ad. As noted, the State Committee that paid for the ad  
16 accepted a substantial amount of contributions from corporations. *See supra* page 4.<sup>10</sup> Oelrich's  
17 ad lists his qualifications and accomplishments, was not a continuation of activities he had  
18 previously undertaken as a State officeholder prior to his federal candidacy, and aired in close

<sup>9</sup> The exception at section 441i(e)(2) does not apply here, where, Oelrich was not a state or local candidate at the time of the advertisement, and there was no nonfederal election at issue.

<sup>10</sup> It does not appear that the costs of the radio ad would constitute an in-kind contribution from the State Committee to the Federal Committee by virtue of being a coordinated communication. Commission regulations set forth a three-prong test to determine whether a payment for a communication is an in-kind contribution as a result of coordination between the person making the payment and the candidate. *See* 11 C.F.R. § 109.21(a)(1)-(3). Consistent with Commission advisory opinions, the Commission concludes that the advertisement here would not meet the payment prong of the coordination test at 11 C.F.R. § 109.21(a)(1). *See* Advisory Ops. 2009-26 (Coulson) at 10 and 2007-01 (McCaskill) at 5.

1 proximity to his primary, but focuses on his State Senate record, specifically thanking  
2 constituents for the opportunity to serve them over the years, and makes no mention of his  
3 federal candidacy. Further, Oelrich asserts that he created and disseminated the advertisement  
4 with funds from his state committee pursuant to a Florida state statute specifically authorizing  
5 him to purchase "thank you" advertising because he declined to run for re-election. *See supra*  
6 note 4. The Commission does not need to reach the question of whether Oelrich's radio  
7 advertisement PASO'd him. While a state statute does not preempt any applicable provisions of  
8 the Act, on balance this fact, together with the other unique circumstances presented in this  
9 matter, supports declining to pursue the matter through additional administrative proceedings.

10 Accordingly, the Commission dismisses the allegations that Steve Oelrich, the State  
11 Committee, and the Federal Committee violated 2 U.S.C. § 441i(e). *See Heckler v. Chaney*, 470  
12 U.S. 821 (1985).